



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
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Arnold Schwarzenegger
Governor

January 30, 2009

Son Nguyen
California Department of Transportation
District 12
3337 Michelson Drive, Suite 380
Irvine, CA 92612-8894

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE STATE ROUTE 91 EASTBOUND LANE ADDITION, ORANGE AND RIVERSIDE COUNTIES (CORPS FILE NO. NOT AVAILABLE)

Dear Mr. Nguyen:

On October 7, 2008, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for the proposed construction of an additional eastbound lane on State Route ("SR") 91 in Orange and Riverside Counties. On January 27, 2009, we received an amended compensatory mitigation plan for discharges of fill to wetlands. The plan includes a Jurisdictional Delineation Report evaluating various mitigation sites along Carbon Canyon Road in Caltrans' right of way. This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan ("Basin Plan") for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments:

Project Description:	Construction of an additional eastbound lane on SR-91, beginning in the vicinity of SR-241 (post mile 15.9/19.9 in Orange County), and ending in the vicinity of SR-71 (post mile 0.0/2.9 in Riverside County). The project will involve the discharge of fill to waters of the U.S. as part of the freeway widening and related grade modifications. The project is located within Sections 30, 32, 36, and 20 of Township 3 South and Ranges 7 and 8 West of the U.S. Geological Survey <i>Prado Dam, California</i> and <i>Black Star Canyon, California</i> , 7.5-minute topographic quadrangle maps (33.87623 degrees N/-117.73844 degrees W).
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Receiving Waters:	See Table 1 below.
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California Environmental Protection Agency

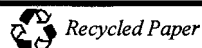


Table 1: Proposed discharges of fill.

Waters of the U.S.	Location (latitude/longitude)	Area to be filled (acres)
Drainage 1	33 deg. 52 min. 09 sec. N/-117 deg. 42 min. 19 sec. W	0.838
Drainage 2	33 deg. 52 min. 14 sec. N/-117 deg. 42 min. 04 sec. W	0.067
Drainage 3	33 deg. 52 min. 22.3 sec. N/-117 deg. 41 min. 48 sec. W	0.094
Drainage 4	33 deg. 52 min. 21.8 sec. N/-117 deg. 41 min. 28 sec. W	0.048
Drainage 5	33 deg. 52 min. 19 sec. N/-117 deg. 41 min. 17 sec. W	0.014
Coal Canyon Wash (Drainage 6)	33 deg. 52 min. 11 sec. N/-117 deg. 41 min. 17 sec. W	0.087
Drainage 7	33 deg. 52 min. 16 sec. N/-117 deg. 41 min. 14 sec. W	0.007
Drainage 8	33 deg. 52 min. 17 sec. N/-117 deg. 41 min. 13 sec. W	0.019
Drainage 9	33 deg. 52 min. 14 sec. N/-117 deg. 41 min. 04 sec. W	0.015
Drainage 10	33 deg. 52 min. 09 sec. N/-117 deg. 40 min. 51 sec. W	0.004
Drainage 11	33 deg. 52 min. 07 sec. N/-117 deg. 40 min. 40 sec. W	0.041
Drainage 12	33 deg. 52 min. 07 sec. N/-117 deg. 40 min. 38 sec. W	0.227
Drainage 13	33 deg. 52 min. 12 sec. N/-117 deg. 40 min. 12 sec. W	0.104
Drainage 14	33 deg. 52 min. 17 sec. N/-117 deg. 39 min. 57 sec. W	0.028
Drainage 15	33 deg. 52 min. 26 sec. N/-117 deg. 39 min. 46 sec. W	0.031
Drainage 16	33 deg. 52 min. 34 sec. N/-117 deg. 39 min. 37 sec. W	0.036
Drainage 17	33 deg. 52 min. 45 sec. N/-117 deg. 39 min. 18 sec. W	0.015
Drainage 18	33 deg. 52 min. 49 sec. N/-117 deg. 39 min. 08 sec. W	0.007
Drainage 19	33 deg. 52 min. 51 sec. N/-117 deg. 39 min. 00 sec. W	0.010
Wardlow Wash/Fresno Wash Confluence (Drainage 20)	33 deg. 52 min. 55 sec. N/-117 deg. 38 min. 46 sec. W	0.805
Drainage 21	33 deg. 52 min. 02 sec. N/-117 deg. 38 min. 11 sec. W	0.0008
Total		2.44

Fill Area: 2.44 acres, including 0.053 acres of wetlands (8,149 total linear feet).

Dredge Volume: Not applicable.

Federal Permits: US Army Corps of Engineers Nationwide Permit Nos. 3 and 13.

You have proposed to mitigate water quality impacts as described in your Certification application and subsequent submittals. The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- Areas of temporary excavations in waters of the State will be re-vegetated with appropriate native vegetation.
- Site-specific best management practices ("BMPs") will be specified in the site's Storm Water Pollution Prevention Plan ("SWPPP").

Offsite Water Quality Standards Mitigation Proposed:

- An in-lieu fee payment will be made to the Santa Ana Watershed Association ("SAWA") towards the eradication of 2.66 acres of invasive plant species.
- Impacts to wetlands will be compensated for through the creation of 0.275 of freshwater wetlands at locations along State Route 142 ("SR-142"), known as Carbon Canyon Road. The work will be conducted by a member agency of SAWA on behalf of Caltrans.

This certification addresses impacts to water quality standards associated with the dredging or filling of waters of the United States. Construction and post-construction impacts resulting from the project and use of the roadways are addressed by waste discharge requirements issued to the Department of Transportation ("Caltrans") by the State Water Resources Control Board in Order No. 99-06 DWQ. These requirements include the development and implementation of appropriate Best Management Practices for the purpose of removing construction-related and transportation-related pollutants from discharges from Caltrans' rights-of-way and easements.

Project plans provided in your application indicate the use of lead-contaminated soils as fill in various areas, including in waters of the State. Although initial construction may stabilize fills in waters of the State, over time, storm damage and subsequent repairs and maintenance may result in the discharge of lead-contaminated soil in storm water runoff into waters of the State¹. In order to prevent long-term potential water quality impacts, Condition 2, below, prohibits the use of lead-contaminated soils as fill in waters of the State.

Construction de-watering discharges may be regulated under Regional Board Order No. R8-2003-0061, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant ("De Minimus") Threat to Water Quality. For more information,

¹ During a telephone discussion on December 17, 2008, Caltrans staff indicated that the use of lead-contaminated soil as fill in waters of the State was likely an error in the project plans. Condition 2 corrects this error, as opposed to awaiting amended project plans, for purposes of issuing this Certification in a timely manner.



please review Order No. R8-2003-0061 at: www.waterboards.ca.gov/santaana/pdf/03-61.pdf.

You have applied for coverage under nationwide permits from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have obtained a Streambed Alteration Agreement with the California Department of Fish and Game. Pursuant to California Environmental Quality Act ("CEQA"), Caltrans and the Riverside County Transportation Commission ("RCTC") adopted a Mitigated Negative Declaration on December 28, 2007 (State Clearinghouse No. 2007081004). Pursuant to California Code of Regulations, Title 14, Section 15096, subdivision (f), the Regional Board must consider the environmental effects of the project as shown in the associated negative declaration prior to reaching a decision on the project. The Regional Board has considered Caltrans' and RCTC's Mitigated Negative Declaration in the issuance of this Certification and finds that changes or alterations have been required, or incorporated into the proposed project, which avoid or mitigate impacts to water quality to a less than significant level.

This 401 Certification is contingent upon the execution of the following conditions:

- 1) A copy of this Certification and any subsequent amendments must be maintained on site as a denoted element of the project Storm Water Pollution Prevention Plan ("SWPPP").
- 2) The use of lead-contaminated soils as fill within waters of the State is prohibited.
- 3) Areas of temporary excavations in waters of the State must be re-vegetated with appropriate native vegetation. Initial seeding or planting work must be completed by the November 1st that follows the completion of project construction activities in the affected waters.
- 4) An in-lieu fee payment must be made to SAWA, as proposed, towards the eradication of 2.66 acres of invasive woody plant species. The payment must include funding for follow-on maintenance of the mitigation site(s) in perpetuity and the completion of functional assessments, using published and generally accepted methods (i.e., California Rapid Assessment Method), for the purpose of evaluating the marginal improvement to the mitigation site(s). Evidence of the fee payment must be provided to the Executive Officer by September 30, 2009, as proposed in a Caltrans staff electronic message dated January 30, 2009.
- 5) Caltrans must create a minimum of 0.275 acre of freshwater wetlands along SR-142, Carbon Canyon Road, as proposed. The creation effort must proceed according to a written work plan. The work plan must include a compliance schedule and the completion of a wetland delineation, using generally accepted methods, to verify the aerial extent of the created wetlands. A work plan must be submitted to Regional Board staff by July 15, 2009. Initial creation work must begin not later than November 1, 2010, followed by a minimum of five years of monitoring and maintenance.

- 6) The applicant must comply with the requirements of the Clean Water Act section 404 permit

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. Violations of the conditions of this certification may subject the applicant to civil liability pursuant to Water Code section 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste

January 30, 2009

Discharge Requirements for Dredge and Fill Discharges That Have Received Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 2003-0017-DWQ is available at:
www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



for GERARD J. THIBEAULT
Executive Officer

cc (via electronic message):

U. S. Army Corps of Engineers, Los Angeles Office – Stephanie Hall
State Water Resources Control Board, OCC – David Rice
State Water Resources Control Board, DWQ – Water Quality Certification Unit
California Department of Fish and Game – Erinn Wilson
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and David Smith

APF: 401/certifications/SR 91 EB lane addtn 302008-28

